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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/437,102	11/09/1999	FREDERICK HERZ	REFH-0113	7526
7590	06/01/2005		EXAMINER MA, JOHNNY	
Melvin A Hunn Hill & Hunn LLP 201 Main Street Suite 1440 Fort Worth, TX 76102			ART UNIT 2614	PAPER NUMBER

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/437,102	Applicant(s) HERZ ET AL.	
	Examiner Johnny Ma	Art Unit 2614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 44 and 96 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44 and 96 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/16/99</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

As noted in the patent application transmittal letter filed 11/9/99, original claims 1-43, 45-95 and 97-115 are cancelled, claims 44 and 96 are pending in the application. In view of the cancellation of the claims, the restriction/election requirement mailed on 7/9/2004 is vacated.

#### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, and 828" as illustrated in Figure 8. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 44 is rejected under 35 U.S.C. 102(e) as being anticipated by Story (US 5,541,638)

As to claim 44, note the Story reference that discloses an user programmable entertainment method and apparatus. The claimed "receiving at a customer set top terminal video programming data from said plurality of video sources" is met by "[t]he data storage device 180 stores various expressive works, such as television shows, movies and news programs in compressed digital data format. Although shown as a singular device, the data storage device 180 may comprise a plurality of storage devices which are switchably connected to the communication network 170" (Story 3:55-60) and "each user of the entertainment services provided by the present invention requests and obtains entertainment services through a user node 100" (Story 3:8-11) wherein entertainment services are received at the user site from data storage device (Story 5:3-32). The claimed "providing feedback data from said customer set top terminal indicating at least the video programming selected by that customer through said customer set top terminal during a predetermined time interval" and "collecting said feedback data from said customer set top terminal" are met by "[t]he program processor 175 then solicits the user to define the user preference signal. To this end, the program processor 175 sends prompt signals through the communication network 170 to the user selection interface 150 through the transmission device 160. The prompt signals, which prompt the user to define the user preference signal, are communicated to the user through either a display means located on the user selection interface 150 or the video display 120. The custom user preference signal may comprise, for example, a sequential list of movies, television shows, or other works, that should be transmitted in the entertainment signal... The user selections defining the user preference

signal are entered in the user selection interface 150. The user selection interface 150 thereafter provides the user preference signal either as a batch, or contemporaneously as it is being defined, to the transmission device 160. The transmission device 160 transmits the user preference signal to the program processor 175 over the communication network 170” (Story 4:8-52).

The claimed “controlling a switch connecting said plurality of video programming sources to respective nodes in a video distribution system so as to selectively transmit newly proposed video programming to customers which is proposed in response to said feedback data” is met by “the data storage device 180 may comprise a plurality of storage devices which are switchably connected to the communication network 170” (Story 3:55-60) wherein “[b]efore the entertainment signal can be transmitted, however, the program processor 175 provides a control signal to the data storage device 180 to establish a point-to-point connection, also called a virtual circuit, with the user node 100. The program processor 175 then locates the storage address of video or audio data for the first selected discrete expressive work within the data storage device 180. The program processor 175 then sends a control signal commanding the data storage device 180 to begin transmitting the data [proposed video programming] at the located storage address to the user station 100 over the communication network 170” (Story 5:1-19) and wherein the program processor may also select proposed programming within specified parameters defined by the user (Story 5:20-32).

4. Claim 96 is rejected under 35 U.S.C. 102(e) as being anticipated by Hendricks et al. (US 5,600,364).

As to claim 96, note the Hendricks et al. reference that discloses a network controller for cable television delivery systems. The claimed “a plurality of customer set top terminals for

receiving video programming data” is met by “[t]he cable headend receives and processes digitally compressed program signals before the signals are relayed to each set top terminal” (Hendricks 3:55-57) wherein the programs signals comprise video programming data (Hendricks 7:40-58). The claimed “ and providing feedback data indicating at least the video programming received by that customer set top terminal during a predetermined time interval” is met by “[t]he network controller 214 monitors programs selections at subscribers’ homes, maintains accurate account and billing information and authorizes both subscriber channel access and particular set top terminals 220 to operate in the system” (Hendricks 14:54-58) wherein monitoring programs selections includes monitoring viewer’s programs watched (Hendricks 30:42-44; 37:13-20). The claimed “a video distribution system comprising a switch for selectively transmitting a plurality of video programs from a plurality of video program sources to respective nodes” is met by “[t]he program delivery system 200 generally includes (i) at least one operations 202, where program packaging and control information are created and then assembled in the form of digital data, (ii) a digital compression system, where the digital data is compressed, combined/multiplexed, encoded, and mapped into digital signals for satellite transmission to the cable headend 208” (Hendricks 7:19-25) and “[s]ubsequent to receiving programming, the operations center 202 packages the programs into the groups and categories which provide the optimal marketing of the programs to subscribers... The packaging of the digital signals is typically performed at the operations center 202 by computer assisted packaging equipment (CAP). The CAP system normally includes at least one computer monitor, keyboard, mouse, and standard video editing equipment. A programmer packages the signals by entering certain information into the CAP. This information includes the date, time slot, and program category of

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the various programs. The programmer and the CAP utilize demographic data and ratings in performing the packaging tasks. After the programmer selects the various programs from a pool of available programs and inputs the requisite information, the programmer, with assistance from the CAP, can select the price and allocate transponder space for the various programs. After the process is complete, the CAP displays draft menus or program schedules that correspond to the entries of the programmer. The CAP may also graphically display allocation of transponder space. The programmer may edit the menus and transponder allocation several times until satisfied with the programming schedule. During the editing, the programmer may direct the exact location of any program name on a menu with simple commands to the CAP” (Hendricks 8:43-9:8). The claimed “means for transmitting said plurality of video programs from said respective nodes to corresponding customer set top terminals” is met by “[w]ithin the cable headend 208, the received signals may be decoded, demultiplexed, managed by a local central distribution and switching mechanism, combined and then transmitted to the set top terminal 220 located in each subscriber’s home over the cable system 210” (Hendricks 7:29-34) wherein the plurality of programs are received from a plurality of program sources (Hendricks 8:27-53). The claimed “and a system controller responsive to said collecting means for controlling said switch so as to schedule the presentation of said plurality of video programs to customers in response to said feedback data” is met by “[t]he programmer and the CAP utilize demographic data and ratings in performing the packaging tasks” (Hendricks 8:54-67) wherein “program monitoring and selection control will take place only at the cable headend 208 by the local cable company and its decentralized network controllers 214 (i.e., decentralized relative to the operations center 202, which is central to the program delivery system 200). The local cable

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company will in turn be in communication with the operations center 202 or a regional control center (not shown) which accumulates return data from the set top terminal 220 for statistical or billing purposes” (Hendricks 11:30-40) wherein “[t]he network controller 214 monitors programs selections at subscribers’ homes, maintains accurate account and billing information and authorizes both subscriber channel access and particular set top terminals 220 to operate in the system” (Hendricks 14:54-58) wherein monitoring programs selections includes monitoring viewer’s programs watched (Hendricks 30:42-44; 37:13-20).

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The McMullan, Jr. reference (US 5,251,324) discloses a method and apparatus for generating and collecting viewing statistics for remote terminals in a cable television system.

The Hashimoto reference (US 5,075,771) discloses a method of and apparatus for optimal scheduling of television programming to maximize customer satisfaction.

The Miller reference (US 4,170,782) discloses a programming and selection monitoring system for television receivers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnny Ma whose telephone number is (571) 272-7351. The examiner can normally be reached on 8:00 am - 5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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